U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30044835

Date: MAR. 21, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an associate professor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish he satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined the Petitioner fulfilled only one (judging under 8 C.F.R. § 204.5(h)(3)(iv)). On appeal, the Petitioner maintains his qualification for an additional four, discussed below.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[1] The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.[2] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[3]

In response to the Director's request for evidence (RFE), the Petitioner submitted an article entitled, [redacted] posted on technologyreview.com. While the article indicates authorship by [redacted] the Petitioner did not identify the individual(s) in this organization or group who authored the material. Moreover, the article is not about the Petitioner. Rather, the article reports on a computer model in which the Petitioner is credited as one of the creators. Although the article quotes the

[1] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.
[2] *Id.*
[3] *Id.*

Petitioner in response to a discussion of the computer model, the article does not concern the Petitioner. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

Finally, the Petitioner did not demonstrate that technologyreview.com qualifies as a professional or major trade publication or other major medium. The Petitioner's RFE response letter, and repeated in the brief on appeal, listed "Intended audience – researchers and amateurs interested in emerging technology" and "Online circulation." However, the Petitioner did not provide evidence to support the assertions about the intended audience, nor did the Petitioner include circulation figures. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). In evaluating whether a publication is a professional publication, major trade publication, or major medium, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).[4] As such, the Petitioner did not establish the website enjoys status as a professional or major trade publication or other major medium.

Accordingly, the Petitioner did not show he meets this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.[5] USCIS then determines whether the original contributions are of major significance to the field.[6] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[7]

The Petitioner argues that he "has been invited to write journal articles based on his research and workshops," and "[t]hese invitations show that [he] is sought by others within his field of study because of his knowledge, skill, and continued contribution to others within the field." Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd* in part, 596 F.3d 1115. Evidence that the person's work was funded, patented, or published, while potentially demonstrating the work's originality, will not necessarily establish, on its own, that the work is of major significance in the field.[8] Here, as discussed further below, the Petitioner has not shown that the field views any of his publications or workshops as original contributions of major significance in the field.

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[4] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[5] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[6] *Id.*
[7] *Id.*
[8] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

The Petitioner contends that he "has published over a dozen scientific articles and garnered over 345 citations of his work." This criterion requires a petitioner to establish original contributions of major significance in the field. Thus, the burden is on the petitioner to identify the original contributions and explain how or why they are considered to be of major significance in the field. Here, the Petitioner did not demonstrate how his cumulative number of citations represents contributions of major significance in the field. Moreover, aggregate citation figures tend to reflect a petitioner's overall publication record rather than identifying which research or article the field considers to be majorly significant.

In addition, the Petitioner points to his article, [redacted] (*Computational Complexity*) and asserts that "the 264 citations it has garnered are very significant relative to other papers in the field" and "the top cited article of [J-W-], an expert in quantum information and coauthor of this paper, has just under 1200 citations." Again, the comparison of the Petitioner's 345 total citations to J-W-'s 1200 total citations does not establish how this co-authored paper constitutes an original contribution of major significance in the field. In fact, the comparison of aggregate numbers to others in the field is more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates an individual who is among that small percentage at the very top of the field of endeavor in a final merits determination. *See Kazarian* 996 F.3d at 1115. However, citatory comparisons of an individual's article to a particular article that the field views as being majorly significant may be probative to establish a citation baseline for majorly significant articles in the field.

Further, the Petitioner provided evidence of J-W-'s top five most cited papers reflecting 1,153, 1,109, 721, 524, and 451 citations, respectively. First, the Petitioner did not provide any evidence showing that any of J-W-'s papers or articles are considered to be original contributions of major significance in the field. Likewise, the Petitioner did not show the significance or relevance of these citation figures, so as to show they are unusually high citations indicating major significance. Even if the statistics are relatively high in the field, the 264 citations for the *Computational Complexity* article are substantially less when compared to J-W-'s top five cited papers.[9]

Finally, the Petitioner's brief makes several assertions, such as the comparison of the citations of other articles published in the same edition of *Computational Complexity*, the impact factor of the journal, commentaries from other journals, and the popularity of his YouTube channel. However, the Petitioner did not submit any documentary evidence to support or corroborate any of these assertions. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., S-M-*, 22 I&N Dec. at 51.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown he has made original contributions of major significance in the field.

[9] The Petitioner claims that his "paper is [J-W-'s] tenth highest cited article out of 65 written." Again, the Petitioner only submitted evidence of J-W-'s top five cited articles.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

Although the Director concluded the Petitioner did not satisfy this criterion, we withdraw that determination. As indicated above, the record reflects the Petitioner has authored scholarly articles in professional journals.

Accordingly, the Petitioner demonstrated he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The petitioner must establish performance in a leading or critical role for an organization, establishment, or division or department of an organization or establishment, and the petitioner must demonstrate whether the organization or establishment, or the department or division for which the person holds or held a leading or critical role, has a distinguished reputation.[10]

In response to the Director's RFE, the Petitioner claimed:

> I am a leader in my department, especially to other teaching faculty. I am an innovative and courageous teacher that is motivated by creating the best learning experiences for my students. I am among the highest evaluated by our students every year. I have been recognized for this excellence and leadership through awards and promotion. I have just been promoted to Teaching Professor, the highest rank in my track. I was also awarded this year with the Outstanding Teaching Award from the School of Engineering and Technology. I have been nominated for the [redacted] [redacted] Distinguished Teaching Award.

Although he submitted his teaching promotion summaries from the dean and documentation about the teaching awards, the Petitioner did not claim, nor did he provide any evidence, regarding the distinguished reputation of his department.

On appeal, the Petitioner's brief repeats the claims in the RFE response and states that he "has performed a 'leading role' at the [redacted] and [redacted] has a distinguished reputation." In addition, the brief makes several assertions about [redacted] claiming the source of information was derived from Wikipedia. However, the Petitioner did not submit evidence from Wikipedia or any other documentary evidence to support or corroborate these assertions about [redacted] Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., S-M-*, 22 I&N Dec. at 51.

Because the Petitioner has not shown that either his department or [redacted] enjoys a distinguished reputation, we need not reach, and therefore reserve, whether the Petitioner performed in a leading or critical role. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also*

[10] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

Accordingly, the Petitioner did not establish he satisfies this criterion.

III. CONCLUSION

The Petitioner did not meet the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3). Therefore, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issue.[11]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[11] *See Bagamasbad*, 429 U.S. at 25; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.